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Counsel for Class Representative
Michael Devine

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE: HIGH-TECH EMPLOYEE
ANTITRUST LITIGATION

THIS DOCUMENT RELATES TO:
ALL ACTIONS

Master Docket No. 11-CV-2509-LHK

CLASS ACTION

**JOINDER OF CLASS REPRESENTATIVE
MICHAEL DEVINE TO MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AND REQUEST
FOR MODIFICATION OF SETTLEMENT
NOTICE**

Judge: Hon. Lucy H. Koh
Courtroom: 8, 4th Floor
Date: March 19, 2015
Time: 1:30 p.m.

JOINDER OF CLASS REPRESENTATIVE MICHAEL DEVINE TO MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION SETTLEMENT AND REQUEST FOR MODIFICATION OF
SETTLEMENT NOTICE

Master Docket No. 11-CV-2509-LHK

Class representative Michael Devine joins in Class Counsel's Motion for Preliminary Approval of Class Action Settlement. (Dkt. 1032.) He also requests a modification of the proposed notice, which appears at docket number 1032-1, page 60.

I. The Revised Settlement Falls Within The Range of Possible Approval.

The \$415 million settlement now before the Court reflects an increase of \$90.5 million and will result in an increase of over 35% in the payout to Class members as compared to the proposed settlement rejected by the Court on August 8, 2014.¹ The revised settlement exceeds by \$35 million the benchmark established by the prior settlements approved by the Court, applying the relevant metric of total Class compensation paid during the Class period. (Aug. 8, 2014 Order, Dkt. 974 at 7-8.) The settlement accordingly appears to fall within the range of possible approval based on the criteria identified by the Court in its August 8, 2014 Order.

II. Michael Devine Supports The Current Proposed Settlement.

Michael Devine's opposition to the prior settlement proposal is a matter of record. (Dkt. 934, *see also* June 19, 2014 Hearing Transcript, Dkt. 948.) Following the Court's denial of preliminary approval, Mr. Devine, through his counsel, participated in renewed arm's length negotiations with Class Counsel and Defendants that led to this revised settlement. Having had the opportunity to independently evaluate the risks and benefits of continued litigation, including reviewing substantial portions of the record developed in the case to date, Mr. Devine supports the motion for preliminary approval of the proposed \$415 million settlement. Mr. Devine believes the Court should grant preliminary approval so

¹ Counsel for Michael Devine will apply to the Court for attorney's fees and expenses of up to \$4,525,000, equal to 5% of the \$90.5 million in additional settlement consideration agreed to by the Settling Defendants (or approximately 1.09% of the total Settlement Fund). If the Court awards the fees and expenses requested by Class Counsel and Devine Counsel, the net recovery to class members would increase from \$242,015,000 to \$327,990,000, an increase of \$85,975,000.

1 that Class members have the opportunity to exercise the rights provided them under Federal Rule of
2 Civil Procedure 23.

3 **III. Michael Devine Requests Modification of The Proposed Settlement Notice.**

4 Michael Devine respectfully asks the Court to approve a modification to the Notice of Proposed
5 Settlement of Class Action Lawsuit and Fairness Hearing appearing at docket number 1032-1, page 60.
6 The proposed notice states at page 9, part 16 (“How will the lawyers be paid?”) that Plaintiffs’ Counsel
7 will seek approval of service awards of \$80,000 to each of the Class Representatives. Mr. Devine
8 wishes to apply for a service award of up to \$160,000. Mr. Devine respectfully requests that the Court
9 approve the following modifications to part 16 of the notice to allow for his application (deletions in
10 strikethrough, added language in bold):
11

12 Plaintiffs’ Counsel will also ask the Court to approve at the Fairness Hearing
13 payments of \$80,000 to **Class Representatives Siddharth Hariharan, Mark**
14 **Fichtner, and Daniel Stover** ~~each of the individual Class Representatives~~, as well
15 as ~~to~~ \$80,000 to the estate of former Class Representative Brandon Marshall
16 (who, before his death in December 2013, provided all of the same services to the
17 Class as the other Class Representatives), as Service Awards for their service to
18 the Class. **Class Representative Michael Devine, through his counsel, will ask**
19 **the Court to approve the payment to him of a Service Award of up to**
20 **\$160,000.** The Service Awards shall be paid when the Settlement Fund is
21 distributed to Class Members. The costs of providing this Notice and
22 administering the Settlement are being paid from the Settlement Fund and are
23 estimated to total approximately \$160,000.

24 Mr. Devine believes the request is justified based on his service as a class representative and his
25 work to oppose the original settlement and secure an additional \$90.5 million for the Class. Mr.
26 Devine also believes that in opposing the original settlement he has undertaken a heightened risk
27 that his participation in this litigation will adversely affect his job prospects.
28

1 If the Court approves this modification to the settlement notice, all parties will maintain the right
 2 to object to Mr. Devine's request at the time such applications are made. No modification to the
 3 Settlement Agreement is required.
 4

5 **IV. Conclusion**

6 For the reasons set forth in sections I and II above and in Class Counsel's Memorandum of
 7 Points and Authorities in Support of Motion for Preliminary Approval, Class representative Michael
 8 Devine respectfully joins the motion for preliminary approval of the proposed \$415 million settlement.
 9 He further requests modification to the settlement notice as described in section III above.
 10

11
 12 Dated: January 16, 2015

GIRARD GIBBS LLP

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 14 By: /s/ Daniel C. Girard
 Daniel C. Girard

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CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2015, I caused the foregoing document to be filed electronically with the Clerk of Court through CM/ECF and that the filing was served by CM/ECF on all counsel of record.

/s/ Daniel C. Girard
Daniel C. Girard